

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DARLENE WHISNANT,

Plaintiff,

v.

Case No. 09-10101  
Honorable Patrick J. Duggan

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**OPINION AND ORDER**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on \_March 15, 2010.

PRESENT:       THE HONORABLE PATRICK J. DUGGAN  
                  U.S. DISTRICT COURT JUDGE

On January 9, 2009, Plaintiff filed this lawsuit challenging a final decision of the Commissioner denying her application for Social Security Disability Insurance Benefits. On the same day, this Court referred the case to Magistrate Judge R. Steven Whalen. On June 18, 2009, Plaintiff filed a motion for summary judgment seeking an award of benefits or, in the alternative, an order remanding the case to the Administrative Law Judge for additional findings. On September 18, 2009, the Commissioner filed a motion for summary judgment. Magistrate Judge Whalen considered both motions.

On December 29, 2009, Magistrate Judge Whalen filed his Report and

Recommendation (“R&R”) recommending that this Court grant Plaintiff’s motion, deny Defendant’s motion, and remand the case to the Social Security Administration for further proceedings. At the conclusion of the R&R, Magistrate Judge Whalen advises the parties that they may object and seek review of the R&R within 14 days of service upon them. (R&R at 18.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.*, citing *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir.1991); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981)). Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Whalen. In remanding the case, the Court notes that 42 U.S.C. § 405(g) authorizes only two types of remand: “(1) a post-judgment remand in conjunction with a decision affirming, modifying, or reversing the decision of the Secretary (a sentence-four remand); and (2) a pre-judgment remand for consideration of new and material evidence that for good cause was not previously presented to the Secretary (a sentence-six remand).” *Faucher v. Sec'y of Health & Human Servs.*, 17 F.3d 171, 174 (6th Cir. 1994). Because this case does not require consideration of new evidence that was not previously available, the remand must be made post-judgment pursuant to sentence four of 42 U.S.C. § 405(g). Therefore, the Court reverses the Commissioner’s denial of Plaintiff’s benefits insofar as the ALJ’s hypothetical question to the vocational expert failed to account for Plaintiff’s psychological impairments and

the ALJ's decision failed to indicate whether the ALJ rejected, misread, or simply overlooked the findings of a treating neurologist. The Court remands this matter to the Commissioner for proceedings consistent with Magistrate Judge Whalen's R&R.

Accordingly,

**IT IS ORDERED** that Plaintiff's motion for summary judgment is **GRANTED IN PART.**

**IT IS FURTHER ORDERED** that Commissioner's motion for summary judgment is **DENIED.**

**IT IS FURTHER ORDERED** that the Commissioner's denial of Plaintiff's benefits is **REVERSED.**

**IT IS FURTHER ORDERED** that this matter is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for proceedings consistent with Magistrate Judge Whalen's R&R.

A judgment consistent with this order shall issue.

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:  
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